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-and-

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Hearing Date: November 10, 2021, 10:00 a.m.
Response Deadline: November 2, 2021, at 4:00 p.m.

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

IN RE:	:	Chapter 11
	:	
SEARS HOLDINGS CORPORATION, <i>et al.</i> ¹	:	Case No. 18-23538 (RDD)
	:	
Debtors.	:	(Jointly Administered)
	:	
	:	Related to Docket No. 9978

**CROWN EQUIPMENT CORPORATION'S RESPONSE TO DEBTORS' THIRTY-
NINTH OMNIBUS OBJECTION TO PROOFS OF CLAIM
(DISALLOW, REDUCE OR RECLASSIFY)**

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are as follows: Sears Holdings Corporation (0798); Kmart Holding Corporation (3116); Kmart Operations LLC (6546); Sears Operations LLC (4331); Sears, Roebuck and Co. (0680); ServiceLive Inc. (6774); SHC Licensed Business LLC (3718); A&E Factory Service, LLC (6695); A&E Home Delivery, LLC (0205); A&E Lawn & Garden, LLC (5028); A&E Signature Service, LLC (0204); FBA Holdings Inc. (6537); Innovel Solutions, Inc. (7180); Kmart Corporation (9500); MaxServ, Inc. (7626); Private Brands, Ltd. (4022); Sears Development Co. (6028); Sears Holdings Management Corporation (2148); Sears Home & Business Franchises, Inc. (6742); Sears Home Improvement Products, Inc. (8591); Sears Insurance Services, L.L.C. (7182); Sears Procurement Services, Inc. (2859); Sears Protection Company (1250); Sears Protection Company (PR) Inc. (4861); Sears Roebuck Acceptance Corp. (0535); SR – Rover de Puerto Rico, LLC (f/k/a Sears, Roebuck de Puerto Rico, Inc.) (3626); SYW Relay LLC (1870); Wally Labs LLC (None); SHC Promotions LLC (9626); Big Beaver of Florida Development, LLC (None); California Builder Appliances, Inc. (6327); Florida Builder Appliances, Inc. (9133); KBL Holding Inc. (1295); KLC, Inc. (0839); Kmart of Michigan, Inc. (1696); Kmart of Washington LLC (8898); Kmart Stores of Illinois LLC (8897); Kmart Stores of Texas LLC (8915); MyGofer LLC (5531); Rover Brands Business Unit, LLC (f/k/a Sears Brands Business Unit Corporation) (4658); Sears Holdings Publishing Company, LLC. (5554); Sears Protection Company (Florida), L.L.C. (4239); SHC Desert Springs, LLC (None); SOE, Inc. (9616); StarWest, LLC (5379); STI Merchandising, Inc. (0188); Troy Coolidge No. 13, LLC (None); BlueLight.com, Inc. (7034); Sears Brands, L.L.C. (4664); Sears Buying Services, Inc. (6533); Kmart.com LLC (9022); Sears Brands Management Corporation (5365); and SRe Holding Corporation (4816). The location of the Debtors' corporate headquarters is 1700 Broadway, 19th Floor, New York, New York 10019.

INTRODUCTION

Crown Equipment Corporation, doing business under its own name as well as the name Crown Lift Trucks (“Crown”) hereby responds to the Debtors’ Thirty-Ninth Omnibus Objection to Proofs of Claim (Disallow, Reduce or Reclassify) (“Objection”), filed by counsel for the Debtors on October 19, 2021 [Docket No. 9978]. As the basis for its response, Crown sets forth the following in support:

BACKGROUND

1. On October 15, 2018 (the “Petition Date”), the Debtors filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Southern District of New York.

2. On April 5, 2019, Crown timely filed a proof of claim (“Claim No. 14261”), which asserts an unsecured amount of \$584,904.23 for unpaid invoices for goods, equipment, rentals, and maintenance services provided by Crown. Claim No. 14261 also asserts a claim pursuant to 11 U.S.C. § 503(b)(9) in the amount of \$23,983.67 for unpaid invoices for goods received by the Debtors from Crown within twenty days before the Petition Date.

3. On August 29, 2019, Crown filed the Motion of Crown Equipment Corporation for Allowance and Payment of Administrative Expense Claims Pursuant to 11 U.S.C. §§ 503(a), 503(b)(1), and 507(a)(2) [Docket No. 5033] (“Claim No. 20472”) for an administrative expense in the amount of \$276,782.78. No response to the motion was made and on October 22, 2019 the Debtor adjourned the hearing on the motion [Docket No. 5470].

4. On October 19, 2021, the Debtors filed the Objection. On Exhibit B appended to the Objection, the Debtors included Claim No. 14261 among the Reclassified Claim².

² Undefined terms herein have the same definitions set forth in the Objection.

Consequently, the Debtors seek to reclassify the entirety of the § 503(b)(9) portion of Claim No. 14261 and the Debtors seek to add the § 503(b)(9) amount to the existing general unsecured portion, increasing the unsecured portion of Claim No. 14261 to \$608,887.90.³ Furthermore, on Exhibit C appended to the Objection, the Debtors included Claim No. 20472 among the Reduced Claims, and thereby seek to reduce Claim No. 20472 to \$22,956.83.

ARGUMENT

Claim No. 14261

5. With respect to the § 503(b)(9) portion of Claim No. 14261, Crown delivered goods, totaling \$23,983.67, to the Debtors within twenty days prior to the Petition Date, and such goods qualify for treatment under 11 U.S.C. § 503(b)(9). The specific goods delivered were set forth in the invoices attached to Claim No. 14261. A summary of invoices attached hereto as Exhibit A lists only those invoices containing a § 503(b)(9) amount. The basis for the Debtors' contention that Claim No. 14261 should be reclassified is based on the Debtors' review of its "books and records." However, the Debtors have failed to provide any evidence or explanation that would justify converting the § 503(b)(9) portion of Claim No. 14261, in the amount of \$23,983.67, into a general unsecured claim.

6. Claim No. 14261 is clearly not comprised entirely of a general unsecured claim, as Claim No. 14261 distinctly asserts a claim pursuant to 11 U.S.C. § 503(b)(9). Conversion of the § 503(b)(9) portion of Claim No. 14261 to a general unsecured claim would not accurately reflect the nature and priority classification of Claim No. 14261 as allowed by the Bankruptcy Code.

³ Crown acknowledges that \$584,904.23 of Claim No. 14261 is a general unsecured amount and such portion of Claim No. 14261 is not disputed.

Claim No. 20472

7. An administrative expense includes “the actual, necessary costs and expenses of preserving the estate” incurred after the bankruptcy petition date. 11 U.S.C. § 503(b)(1)(A). For a claim to be given administrative expense status, two elements must be satisfied: (1) the expense must arise out of a transaction between the creditor and the bankruptcy’s trustee or debtor in possession, and (2) the creditor’s consideration for the expense must be both supplied to and beneficial for the debtor in possession in the operation of the business. *In re Ames Dept. Stores, Inc.*, 306 B.R. 43, 54-55 (Bankr. S.D.N.Y. 2004); *In re Adelphia Business Solutions, Inc.*, 296 B.R. 656, 662 (Bankr. S.D.N.Y. 2003).

8. Claim No. 20472 asserts an administrative expense in the amount of \$276,782.78 for unpaid invoices for certain parts, rentals, and lift truck maintenance and repair services provided by Crown to the Debtors after the Petition Date, which provided an actual benefit to the bankruptcy estate. Therefore, Crown is owed \$276,782.78, as further detailed in the summary of invoices attached to Claim No. 20472 and Exhibit B attached hereto. The basis for the Debtors’ contention that Claim No. 20472 is a Reduced Claim is also based on the Debtors’ review of its “books and records,” which the Debtors contend that only the proposed reduced amount is entitled to administrative priority. However, the Debtors have again failed to provide any evidence or explanation that would justify reducing Claim No. 20472, which totals \$276,782.78, to \$22,956.83.

9. The Debtors have incorrectly determined that the Debtors are not liable for the entire asserted amount in Claim No. 20472 because as evidenced in the summary of invoices appended to Claim No. 20472 and as attached hereto as Exhibit B, Claim No. 20472 derives from the actual and necessary costs and expenses incurred after the Petition Date in connection

with operating Debtors' business. A reduction of Claim No. 20472 to \$22,956.83 would result in a large diminution of the claim's value and would not accurately reflect Crown's entitlement to reimbursement as allowed by 11 U.S.C. § 503(b)(1)(A).

10. Counsel for Crown initiated correspondence with Debtors' counsel on October 26, 2021 in an effort to informally resolve any issues concerning Claim Nos. 14261 and 20472 and to request details as to the basis for Debtor's objection. Crown's counsel further offered to provide any invoice requested by the Debtors with respect to Claim No. 20472. Counsel for the Debtor, Furqaan Siddiqui responded substantively yesterday (Nov. 1). Thus, while there have been communications between counsel, it is reasonably clear that the matter will not be resolved prior to the deadline to submit a response to the Objection.

11. Pursuant to the Objection, Crown identifies Robert Hanseman Esq, whose contact information is below, as the legal representative possessing ultimate authority to reconcile, settle or otherwise resolve the Proofs of Claim.

CONCLUSION

WHEREFORE, on the basis of the foregoing, Crown respectfully requests that the Court deny the Debtors' Objection with respect to Claim Nos. 14261 and 20472. Crown requests that the Court preserve and approve the § 503(b)(9) portion of Claim No. 14261, in the amount of \$23,983.67. Crown also requests the Court preserve and approve Claim No. 20472 with an administrative expense in the amount of \$276,782.78. Crown further requests all other relief to which it is or may become entitled.

Dated: New York, New York
November 2, 2021

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of November 2021, I caused a true and correct copy of the foregoing to be served by the Court's Electronic Case Filing System on those parties registered to receive electronic notice, and to the parties below not receiving ECF, by email to the email addresses listed, and to the extent an email address is not listed below, by U.S. mail.

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Exhibit A

Summary of Invoices (§ 503(b)(9) portion of Claim No. 14261)

	A	B	C	D	E
1		Crown Equipment Corporation			
2		Summary of Invoices (§ 503(b)(9) Portion)			
3					
4					
5	Sears Holdings Corporation, et al.				
6					
7					
8	<u>Invoice No.</u>	<u>Invoice Date</u>	<u>503(b)(9) Portion</u>	<u>Billing Type</u>	
9	133350231	9/25/2018	\$359.00	Direct Bill	
10	141734	9/30/2018	\$1,045.84	FleetSTATS	
11	141739	9/30/2018	\$38.43	FleetSTATS	
12	136401060	10/12/2018	\$175.02	Direct Bill	
13	142716	10/15/2018	\$204.07	FleetSTATS	
14	142719	10/15/2018	\$3,910.24	FleetSTATS	
15	143484	10/31/2018	\$12,067.06	FleetSTATS	
16	143485	10/31/2018	\$976.52	FleetSTATS	
17	143491	10/31/2018	\$1,678.52	FleetSTATS	
18	144362	11/15/2018	\$2,486.84	FleetSTATS	
19	144407	11/17/2018	\$22.00	FleetSTATS	
20	145841	12/15/2018	\$1,020.13	FleetSTATS	
21					
22					
23					
24					
25	503(b)(9) Claim Amount:		\$23,983.67		

Exhibit B

Summary of Invoices (Claim No. 20472)

Invoice Date	Invoice #	Billing Entity	Branch Name	Customer #	Customer Name	Open Amount
20181117	144407A	FleetStats		30616	Sears MDO Estate	\$3,433.52
20181215	145840A	FleetStats		30615	KMart Stores Estate	\$748.63
20190118	150486453	Branch - Direct Bill	Ontario	246646	Sears 45417 Estate	\$65.00
20190118	150486454	Branch - Direct Bill	Ontario	246646	Sears 45417 Estate	\$65.00
20190118	150486455	Branch - Direct Bill	Ontario	246646	Sears 45417 Estate	\$65.00
20190118	150486456	Branch - Direct Bill	Ontario	246646	Sears 45417 Estate	\$60.00
20190118	150486457	Branch - Direct Bill	Ontario	246646	Sears 45417 Estate	\$65.00
20190118	150486458	Branch - Direct Bill	Ontario	246646	Sears 45417 Estate	\$65.00
20190118	150486459	Branch - Direct Bill	Ontario	246646	Sears 45417 Estate	\$60.00
20190128	136419276	Branch - Direct Bill	Joliet	131025	Sears DC 45439 Estate	\$1,343.81
20190128	136419278	Branch - Direct Bill	Joliet	131025	Sears DC 45439 Estate	\$180.00
20190131	148492	FleetStats		30439	Sears Stores Estate	\$7,993.13
20190131	148496	FleetStats		30615	KMart Stores Estate	\$8,812.74
20190213	116473598	Branch - Direct Bill	Dallas	103814	Sears- Estate	\$1,524.80
20190305	650017369	Branch - Direct Bill	Ontario	234237	Sears Roebuck Co - Estate	(\$899.71)
20190315	157747	FleetStats		30439	Sears Stores Estate	\$6,111.66
20190315	157749	FleetStats		30615	KMart Stores Estate	\$6,470.61
20190315	157750	FleetStats		30616	Sears MDO Estate	\$34,078.47
20190325	144342553	Branch - Direct Bill	Long Beach	333570	Sears PartsDirect Estate	\$223.87
20190331	161411	FleetStats		30616	Sears MDO Estate	\$40,918.47
20190331	161412	FleetStats		30615	KMart Stores Estate	\$12,936.31
20190331	161416	FleetStats		30439	Sears Stores Estate	\$9,338.57
20190412	196000377	Branch - Direct Bill	Reno	494692	Sears MDO Estate	\$85.00
20190415	164889	FleetStats		30616	Sears MDO Estate	\$38,156.41
20190415	164890	FleetStats		30615	KMart Stores Estate	\$5,137.24
20190415	164892	FleetStats		30439	Sears Stores Estate	\$11,207.72
20190430	168660	FleetStats		30616	Sears MDO Estate	\$35,765.79
20190430	168661	FleetStats		30615	KMart Stores Estate	\$7,679.10
20190430	168665	FleetStats		30439	Sears Stores Estate	\$5,818.39
20190516	172396	FleetStats		30439	Sears Stores Estate	\$2,160.28
20190516	172397	FleetStats		30615	KMart Stores Estate	\$10,423.01
20190516	172398	FleetStats		30616	Sears MDO Estate	\$20,587.34
20190520	173072	FleetStats		30615	KMart Stores Estate	\$173.33
20190520	173073	FleetStats		30616	Sears MDO Estate	\$5,929.29
						\$276,782.78